

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY)
AVERAGE WHOLESALE PRICE) MDL NO. 1456
LITIGATION) Civil Action No. 01-12257-PBS
) Subcategory Case No. 03-10643
THIS DOCUMENT RELATES TO:)
) Judge Patti B. Saris
<i>The City of New York, et al.</i>)
) Magistrate Judge Bowler
v.)
<i>Abbott Laboratories, et al.</i>)
)

**PLAINTIFFS' MOTION TO COMPEL DISCOVERY FROM DEFENDANTS
SCHERING CORPORATION AND SCHERING-PLOUGH CORPORATION**

Plaintiffs, the City of New York and New York Counties, respectfully move for entry of an order directing defendants Schering Corporation and Schering-Plough Corporation (hereinafter referred to as "Schering") to produce certain discovery.

Specifically, Schering refuses to produce all responsive documents and data for all at-issue Schering drugs/NDCs with AMP/AWP spreads that Schering's own expert has found to be greater than 30% on an annual basis. Case Management Order No. 33 ("CMO #33") and the September 2008 Order of this Court on Schering's motion for a protective order both provide that plaintiffs are entitled to discovery on all drugs with spreads greater than 30%. *See* CMO #33, ¶ 7 [Docket No. 4745] and September 2008 Order [Docket No. 5605].

This motion is supported by the accompanying Memorandum in Support of Plaintiffs' Motion to Compel Discovery, and the exhibits thereto.

Dated: September 9, 2009

Respectfully submitted,

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Certification Pursuant to Local Rule 7.1

The undersigned counsel certifies pursuant to Local Rule 7.1(a)(2) that he conferred with counsel for defendants on the issues raised in this motion and has not been able to reach agreement.

Dated: September 9, 2009

/s/ Michael Winget Hernandez
Michael Winget-Hernandez

CERTIFICATE OF SERVICE

I, Kathryn B. Allen, hereby certify that I caused a true and correct copy of the foregoing Plaintiffs' Motion to Compel Discovery from Defendants Schering Corporation and Schering-Plough Corporation to be served on counsel of record via electronic service pursuant to Paragraph 11 of Case Management Order No. 2, by sending a copy to LexisNexis File & Serve for posting and notification to all parties.

Dated: September 9, 2009

/s/ Kathryn B. Allen
Kathryn B. Allen